

# Reclamation Manual

Reclamation Acquisition Regulation System

401 DM Addition to FAR &amp; DIAR

PART WBR 1433 -- PROTESTS, DISPUTES, AND APPEALS

WBR 1433

## PART WBR 1433 -- PROTESTS, DISPUTES, AND APPEALS

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WBR 1433.214

**PART WBR 1433 -- PROTESTS, DISPUTES,  
AND APPEALS****SUBPART WBR 1433.1 -- PROTESTS****WBR 1433.103 Protests to the agency.**

(a) *Decision.* Within 10 working days after receipt of an agency protest containing the information in FAR 33.103(b)(3), the CO shall issue a written decision. The decision shall be reviewed by the local attorney-advisor of the Office of the Solicitor before issuance.

(b) *Protests before award.* A determination to proceed with award shall be prepared by the CO under the conditions in FAR 33.103(a)(2) after compliance with DIAR 1433.103.

(c) *Protests after award.* The CO may suspend performance or terminate the contract under the conditions in FAR 33.103(a)(4).

**WBR 1433.104 Protests to the General Accounting Office.**

(a) *Notice of protest.* (1) AAMS, D-7800, shall provide the notification to the CO upon being informed of a protest by the Assistant Solicitor for Procurement and Patents.

(2) Upon receipt of a copy of the protest, AAMS will contact the CO to determine if--

(i) Technical assistance is required in preparing the protest report; and

(ii) Review of the report by AAMS is desired prior to submission to the Assistant Solicitor for Procurement and Patents. See DIAR 1433.104.

(b) *Submission of report.* A copy of the report required by FAR 33.104(a)(3) shall be furnished to AAMS.

(c) *Protests before award.* A determination to proceed with award in the face of a protest under DIAR 1433.104(b) shall be prepared by the CO after consultation with AAMS and the Assistant Solicitor for Procurement and Patents.

(d) *Protests after award.* A determination to continue contract performance shall be prepared in accordance with the procedures in paragraph (c) above.

(e) *Decision.* AAMS shall notify the CO upon being informed of a decision on the protest.

**WBR 1433.105 [Reserved].****SUBPART WBR 1433.2 -- DISPUTES AND  
APPEALS****WBR 1433.206 Initiation of a claim.****WBR 1433.206-80 Tracking claims.**

(a) The CCO shall establish a tracking system to schedule and regularly monitor the resolution of each claim received or initiated. The system shall --

(1) Document any consideration given to the use of the alternate disputes resolution (see FAR 33.214) during the disposition process; and

(2) Be capable of providing the information required by WBR 1401.7184-4.

(b) The status of each outstanding claim shall be reviewed by the CCO on a quarterly basis to ensure that continuing action is being taken to achieve a proper, timely disposition.

(c) A report on each outstanding claim where an audit has been requested shall be made using the format illustrated in WBR 1453.303-1401-4, and submitted to the AAMS by the last day of each fiscal year quarter.

**WBR 1433.210 Contracting officer's authority.****WBR 1433.210-80 Technical analysis.**

(a) CO's conducting a technical analysis of a claim may use the available services of Construction Management, D-8160. Requests for assistance should be made within 30 days after receipt of a certified construction contract claim.

(b) D-8160, within 30 days of receipt of a request under paragraph (a) above, shall review the claim and provide a proposed schedule of actions necessary to complete its technical analysis or to provide assistance.

(c) The CO, when the claim involves contract specifications which were prepared in a regional office, shall obtain comments from the regional engineer on the technical analysis received under paragraph (a) above.

(d) Upon receipt of the schedule in paragraph (b) above, the CO may submit a written request, through the CCO, to D-8160 for its services

**WBR 1433.214 Alternative dispute resolution (ADR).**

(a) *Definitions.* "ADR proceeding," as used in this section, means any process used as an alternative means of dispute resolution or dispute avoidance including, but not limited to, settlement negotiations, mediation, factfinding, mini-trials, non-binding arbitration, dispute review boards, partnering, or any process mutually agreed to by the parties involved.

"Partnering," as used in this section, means a way of two or more parties doing business that recognizes that they have common goals which can be achieved through cooperation and open communications.

(b) *Guidance on ADR proceeding.*

(1) ADR. Guidance for use of common ADR proceedings is contained in the following

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Reclamation ADR Handbooks, available from AAMS: An Overview of Available ADR Processes; Contracting Officers Guide to Resolving Contract Disputes; Mediation; Mini-trial; Disputes Review Board; and How to Avoid ADR Obstacles. Other types of specific ADR guidance and technical assistance is available from AAMS.

(2) *Partnering*. Reclamation promotes voluntary partnering in the administration of construction contracts, or in other types of contracts for which the CO determines there is a need. Additional information and suggested implementation guidance is contained in Reclamation's "Partnering" guide book, which can be obtained from Construction Management, D-8160.

(c) *Settlement memorandum*.

(1) The settlement agreement resulting from an ADR proceeding shall be documented in a memorandum which shall contain the information required by FAR 15.808, DIAR 1415.808, and WBR 1415.808. The memorandum --

(i) Should be prepared by the neutral third-party individual identified in the proceeding agreement;

(ii) Shall be signed by the Reclamation settlement official;

(iii) Is not subject to the review requirements of Subpart WBR 1401.71.

(2) The decision of the settlement official resulting from an ADR proceeding shall not be subject to any further reviews or approvals.

### WBR 1433.215 Contract clauses.

#### WBR 1433.215-80 Reclamation solicitation provisions and contract clauses.

(a) The CO shall insert the clause at WBR 1452.233-80, Claims Accounting -- Bureau of Reclamation, in solicitations and contracts which contain the clause at FAR 52.243-6, Change Order Accounting.

(b) The CO shall insert the provision at WBR 1452.233-81, Notice of Proposed Partnering -- Bureau of Reclamation, in solicitations for construction. The provision may be modified for use in solicitations for other than construction when the CO determines there is a need for proposed partnering.